

## Message Text

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ACTION NEA-10

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FM AMEMBASSY CAIRO  
TO SECSTATE WASHDC PRIORITY 1083  
INFO AMCONSUL ALEXANDRIA

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E.O. 11652: NA  
TAGS: BDIS EG US  
SUBJ: FIRST APPALCHIAN CORPORATION (FAC)

REF: (A) STATE 14227, (B) STATE 17512

SUMMARY:

IN MEETING WITH MININDUSTRY SHAHIN, UNDERSEC HABIB AND CHEMICOKE CHAIRMAN FARID, AMBASSADOR NOTED FAC HAS CALLED ON EMBASSY'S GOOD OFFICES TO TRY TO EFFECT AMICABLE SETTLEMENT OF ITS DISPUTE WITH CHEMICOKE AND TO ENABLE IT TO BID ON NEW COKING COAL TENDER. FAC HAS CHARGED DISCRIMINATION ON PART GOE IN REFUSING COMPANY SHIP LENGTH PRIVILEGE ACCORDED BRITISH AND GERMAN SUPPLIERS. WE HAVE ALSO HEARD IN DETAIL CHEMICOKE POSITION ON DISPUTE. WHILE WE ARE NOT COMPETENT JUDGE RESPECTIVE MERITS OF THE PARTIES' CONFLICTING POSITIONS, WE BELIEVE IT IS IN INTEREST ALL TO TRY RESOLVE MATTER WITHOUT FAC HAVING TO RESORT TO ARBITRATION. SHAHIN ASSERTED GOE ACTION AGAINST FAC TAKEN SOLELY BECAUSE OF LATTER'S FAILURE KEEP ITS CONTRACTUAL COMMITMENT OF DELIVERY OF COAL. GOE CANNOT AFFORD DELAYS IN COAL SUPPLIES. BECAUSE OF LIMITED OFFICIAL USE

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FAC DELINQUENCY, GOE WAS FORCED CONTRACT URGENTLY WITH POLAND FOR IMMEDIATE COAL NEEDS. SHAHIN DENIED ANY DISCRIMINATION ON GOE'S PART AND INSISTED FAC HAD ACCEPTED VESSEL LIMITATIONS. APART FROM INITIAL EXPERIMENTAL SHIPMENT, FAC HAD NOT DELIVERED ONE SHIP LOAD OF COAL. HABIB SUGGESTED THAT FAC CONTRACT, WHICH HAS LAPSED, COULD BE REINSTATED IF AID FINANCED IT.

AMBASSADOR EXPLAINED WHY THAT SUGGESTION NOT FEASIBLE. AFTER FURTHER LENGTHY DISCUSSION, SHAHIN AND HIS COLLEAGUES ASSERTED GOE PREPARED HAVE FAC TAKE MATTER TO ABRITRATION IF COMPANY WISHES TO DO SO. NEW COAL TENDER INCLUDES STIPULATION THAT AMERICAN BIDDERS BE MEMBERS OF AMERICAN COAL EXPORT ASSOCIATION IN EFFORT TO GET LARGER COAL SUPPLIERS TO BID. IF FAC CAN GET ITSELF ACCEPTED AS MEMBER COAL EXPORT ASSOCIATION, SHAHIN INDICATED IT IS FREE TO BID. IN VIEW WIDELY CONFLICTING CLAIMS, WE SEE NOTHING FURTHER EMBASSY CAN DO. FAC MUST DECIDE WHETHER IT NOW WANTS TO TAKE MATTER TO ABRITRATION. END SUMMARY

1. REF B RECEIVED THIS MORNING SHORTLY BEFORE AMBASSADOR'S MEETING WITH MININDUSTRY SHAHIN TO DISCUSS REFERENCED SUBJECT. SHAHIN HAD WITH HIM UNDERSEC HABIB AND CHEMICOKE CHAIRMAN FARID. IF MR. BLACK BELIEVED SHAHIN WOULD OVERRIDE FARID, HE WAS MISTAKEN. ON CONTRARY, HE UPHELD FARID'S POSITION.

2. AMBASSADOR, WHO HAD NOTIFIED SHAHIN IN ADVANCE OF PURPOSE OF CALL, NOTED THAT FAC HAS CALLED UPON EMBASSY'S GOOD OFFICES TO TRY TO EFFECT SOME AMICABLE SETTLEMENT OF ITS DISPUTE WITH CHEMICOKE AND TO ENABLE IT TO BID ON NEW COKING COAL TENDER. FAC HAD PROVIDED LENGTHY BILL OF COMPLAINTS, CHARGING DISCRIMINATION ON PART GOE IN REFUSING TO FAC THOSE SHIP LENGTH PRIVILEGES WHICH HAD BEEN ACCORDED TO BRITISH AND GERMAN SUPPLIERS. WE HAD ALSO HEARD IN LIMITED OFFICIAL USE

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DETAIL FARID'S POSITION AS EXPRESSED TO EMBOFF. THERE CLEARLY A CONSIDERABLE GAP BETWEEN THE CLAIMS OF THE TWO DISPUTANTS. NOT HAVING ACCESS TO ALL THE FACTS, WE NOT SEEKING TO MAKE A JUDGEMENT ON THE RESPECTIVE MERITS OF THE PARTIES' POSITIONS. WE BELIEVED, NEVERTHELESS, THAT IT WAS IN THE INTERESTS OF ALL PARTIES TO TRY TO RESOLVE THIS MATTER EQUITABLY, WITHOUT FAC HAVING TO RESORT TO ARBITRATION, WHICH WE UNDERSTAND IT IS PREPARED TO DO IF NECESSARY. IN LOOKING AT THE FACTS THAT WE HAD FROM BOTH SIDES, IT DID SEEM PUZZLING THAT CHEMICOKE PERMITTED GERMAN AND BRITISH SUPPLIERS TO USE VESSELS OF A LARGER SIZE THAN PERMITTED FOR FAC AND THAT NEW TENDER PERMITS USE OF VESSELS OF UP TO SEVEN HUNDRED FEET. AMBASSADOR ALSO GAVE SHAHIN FAC RESPONSE CITED REF B AND , IN ENSUING DISCUSSION, READ LARGE PORTIONS OF THAT RESPONSE. AMBASSADOR ASKED MININDSUTRY TO CONSIDER THE CASE AND WHAT MIGHT BE DONE TO ALLOW AMICABLE SOLUTION TO BE REACHED AND FAC TO BID ON MOST RECENT TENDER.

3. SHAHIN HAD OBVIOUSLY STUDIED THE CASE. HE STATED THAT GOE ACTION AGAINST FAC TAKEN BECAUSE LATTER HAD FAILED TO KEEP ITS COMMITMENT SCHEDULE TO DELIVER COAL. SHAHIN STRESSED THAT GOE NEEDS CONTINUING, PROMPT SUPPLY OF SUCH COAL TO KEEP ITS FACTORIES IN OPERATION. IT CANNOT AFFORD TO ALLOW GAPS. BECAUSE OF THE URGENCY OF ITS COAL REQUIREMENTS, AND THE FAILURE OF FAC TO MEET ITS DELIVERY COMMITMENT, CHEMICOKE HAD BEEN FORCED TO SIGN A CONTRACT FOR 2,000 TONS OF COAL WITH POLAND. SHAHIN EMPHASIZED GOE HAS NOTHING AGAINST FAC OTHER THAN ITS FAILURE TO RESPECT STIPULATED CONTRACTUAL DELIVERY SCHEDULE. GOE HAD TWICE PROLONGED THE LETTER OF CREDIT. BETWEEN MAY AND OCTOBER FAC HAD NEVER EXPLAINED THE REASONS FOR DELIVERY DELAYS. AMBASSADOR POINTED OUT FAC'S ASSERTION THAT ANNUAL TWO WEEK MINERS' HOLIDAY EARLY IN JULY, FOLLOWED BY FIVE TO SIX WEEK WILDCAT STRIKE, HAD CAUSED INITIAL DELAYS AND THAT FARID HAD LIMITED OFFICIAL USE

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ALLLEGEDLY BEEN INFORMED OF THIS. SHAHIN, HABIB AND FARID ALL INSISTED THAT FAC HAD NOT RAISED STRIKE OR FORCE MAJEURE AS REASON FOR DELAY UNTIL AFTER OCTOBER 20. IN CONTRAST, BRITISH BROKER HAD CITED STRIKES, BUT NOT RPT NOT IN CONTEXT OF FORCE MAJEURE. SHAHIN PROFESSED TO BE UNABLE TO UNDERSTAND WHY, APART FROM INITIAL EXPERIMENTAL SHIPMENT, FAC HAD FAILUED TO PROVIDE EVEN A SINGLE SHIPMENT BETWEEN MAY AND NOVEMBER WHEN CONTRACT LAPSED.

4. AMBASSADOR POINTED OUT FAC'S ASSERTION THAT DISCRIMINATION IN HANDLING VESSEL LENGTH ISSUE HAD DELAYED FAC FROM MEETING ITS SCHEDULE. IT DID NOT SEEM DISTURBING THAT GOE SHOULD ALLOW BRITISH AND GERMANS TO USE LARGER VESSELS AND YET DENY THIS SAME PRIVILEGE TO FAC. FARID, SUPPORTED BY SHAHIN, INSISTED THAT FAC HAD ACCEPTED THE VESSEL LENGTH LIMITATION AND FARID WENT THROUGH THE SAME POINTS NOTED PARA 3, CAIRO 1241. FARID ADDED THAT FROM OCTOBER ONWARD, FAC HAD "RAISED HELL" AS IF SETTING THE STAGE FOR ARBITRATION. GOE, SHAHIN AND FARID INSISTED, HAD NOT CANCELLED CONTRACT. INSTEAD, IT HAD SIMPLY BEEN ALLOWED TO RUN ITS PRESCRIBED PERIOD AFTER WHICH IT LAPSED. DURING THE FOUR WEEKS BETWEEN OCTOBER 20 AND THE LAPSE OF THE CONTRACT IN NOVEMBER, PARID CONTENDED, FAC HAD FAILED TO PROVIDE EVEN A SINGLE SHIPLOAD OF COAL. HENCE, GOE'S NEED TO BUY FROM POLAND TO MEET ITS URGENT AND CONTINUING REQUIREMENTS. FAC'S ACCEPTANCE OF L/C, IN GOE'S VIEW, MAKES IT CLEAR THAT FAC HAD ALSO ACCEPTED EGYPTIAN TERMS.

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TO SECSTATE WASHDC PRIORITY 1084  
INFO AMCONSUL ALEXANDRIA

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C O R R E C T E D C O P Y (TEXT)

5. FARID AND SHAHIN INSISTED THAT L/C HAD NOT BEEN  
CHANGED UNILATERALLY BY GOE AND REITERATED POINT FARID  
HAD MADE EARLIER TO EMBOFF THAT BOTH PARTIES MUST AGREE  
TO ANY REVISION OF L/C (PARA 3(F), CAIRO 1241).

6. MINISTER SHAHIN THEN RECALLED HE HAD MET WITH MR.  
BLACK, BUT STATED HE WAS NOT RPT NOT PERSUADED BY THE  
LATTER'S REASONING. SHAHIN RECALLED THAT MININDUSTRY  
HAD REQUESTED CIP ASSISTANCE IN OBTAINING COAL. PERHAPS  
USG COULD HELP IN THIS MATTER. HABIB SPELLED OUT THIS  
HINT BY STATINT ARBITRATION COULD BE AVOIDED AND GOE  
COULD AGREE THAT FAC CONTINUED TO CONTRACT ON ORIGINAL  
BASIS IF CONTRACT COULD BE FINANCED THROUGH CIP.  
AMBASSADOR TOLD SHAHIN AND HIS COLLEAGUES THAT HE WOULD,  
OF COURSE, REPORT THIS REQUEST, BUT HABIB'S SUGGESTION  
NOT LIKELY TO BE FEASIBLE. FOR ONE THING, NORMAL AID  
PROCEDURES REQUIRE THAT ALL POTENTIAL AMERICAN BIDDERS  
HAVE EQUAL OPPORTUNITY TO SUBMIT BIDS, WHICH CLEARLY  
NOT THE CASE IN CONNECTION WITH ALREADY CONCLUDED FAC  
CONTRACT.

7. AMBASSADOR THEN ASKED SHAHIN WHAT GOE WOULD SUGGEST  
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IN THIS INSTANCE. FARID INTERJECTED THAT, SINCE BOTH

PARTIES ARE IN TOTAL DIAGREEMENT AS TO THE FACT, ARBITRATION IS THE BEST PROCEDURE. GOE IS PREPARED FOR IT. SHAHIN NOTED THAT HE WOULD LIKE AMICABLE SOLUTION, SINCE MININDUSTRY IS ANXIOUS TO OBTAIN MORE U.S. COAL. FARID ECHOED LATTER THEME, NOTING CHEMICOKE IS SEEKING TO BROADEN ITS CONTACTS WITH AMERICAN COAL SUPPLIERS. UP TO NOW, HE RECALLED, IT HAS OBTAINED ITS COAL REQUIREMENTS FROM SMALL AMERICAN FIRMS. IT HAS NOT YET GONE TO WHAT HE CALLED THE "PROPER MARKET IN THE U.S.". IN ORDER TO PREVENT A RECURRENCE OF FACT SITUATION, CHEMICOKE HAD INCLUDED IN THE NEW TENDER DOCUMENT A STATEMENT THAT ALL MERICAN BIDDERS SHOULD BE MEMBERS OF THE AMERICAN COAL EXPORT ASSOCIATION. THIS WOULD INSURE A CHOICE OF WHAT HE CALLED "TWELVE REPUTABLE FIRMS". FAC, FARID NOTED, HAS NO MINES OF ITS OWN. HE RECALLED THAT ONE OF THE LARGER AMERICAN COAL SUPPLIERS, L. N. MCCALL COAL COMPANY, AND OTHER UNNAMED AMERICAN COAL SUPPLIERS, HAD CHALLENGED FAC'S ABILITY TO MEET ITS COMMITMENT AT THE TIME THE ORIGINAL TENDER AWARD WAS MADE. CHEMICOKE HAD HAD TO PROTECT FAC FROM THE CRITICISMS OF OTHER AMERICAN FIRMS. AMBASSADOR ASKED WHETHER IF ISSUE WENT TO ABRITRATION, AS FARID SUGGESTED, THIS LIKELY TO MAKE IT EASIER FOR GOE TO ACHEIVE ITS OBJECTIVE OF INTERESTING LARGER COAL SUPPLIERS OR WOULD IT HAVE A DETERRENT EFFECT. ALL THINGS CONSIDERED, IT WOULD BE BETTER IF AN AMICABLE SOLUTION COULD BE ARRIVED AT AND FAC ALLOWED TO BID ON NEW TENDER.

8. AFTER KICKING THIS AROUND A BIT WITH HIS COLLEAGUES, SHAHIN STATED THAT HE, AS MINISTER, SIMPLY COULD NOT ACCEPT FAC CONTENTION. FAC HAD FAILED TO MEET CONTRACT PROVISIONS WITH RESPECT TO COAL DELIVERIES. IT WAS AS SIMPLE AS THAT. HE REJECTED CHARGE OF DISCRIMINATION, SUPPORTING FARID'S POSITION THAT FAC HAD ONLY BELATEDLY RAISED SUCH CLAIM. SHAHIN EMPHASIZED THAT GOE HAS NO LIMITED OFFICIAL USE

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INTENTION OF DISCRIMINATING AGAINST AMERICAN FIRMS. IF FAC WISHES TO TAKE MATTER TO ARBITRATION, GOE ALSO READY DO SO AND IS CONFIDENT ITS CASE IS THE STRONGER OF THE TWO. SO FAR AS CONCERNS FAC'S DESIRE BID ON NEW TENDER, IF FAC CAN GET ITSELF ADMITTED TO COAL EXPORT ASSOCIATION, INDICATING IT IS A "SERIOUS SUPPLIER" (FARID'S WORDS) OF COAL, IT IS FREE TO BID ON THE NEW TENDER.

9. COMMENT. AS EVIDENT FROM ABOVE, SHAHIN UPHELD HIS PEOPLE. WHILE HE WOULD LIKE TO FIND AN AMICABLE SOLUTION, HIS SOLE ALTERNATIVE IS TO HAVE AID PICK UP THE CONTRACT UNDER CIP. FRANKLY, THIS IS NEITHER PRACTICAL IN TERMS OF AID REGULATIONS NOR DESIRABLE. SHAHIN AND HIS

COLLEAGUES ARE PREPARED TO HAVE THE ISSUE TAKEN TO ARBITRATION IF  
FAC WISHES. IN THE ABSENCE OF ACCESS TO FULL AND COMPLETE  
DOCUMENTATION BY BOTH SIDES, IT IS IMPOSSIBLE TO MAKE ANY  
FIRM JUDGEMENT ON A CASE IN WHICH BOTH PARTIES MAY NOT  
ALWAYS HAVE ACTED AS WELL AS THEY SHOULD. THERE IS NO  
POINT IN TAKING THE MATTER TO A HIGHER GOE LEVEL, SINCE  
PRIMIN IS FULLY PRE-OCCUPIED WITH OTHER, MORE PRESSING  
MATTERS AND WILL SUPPORT MININDUSTRY. SUGGEST  
AMBASSADOR'S MEETING WITH SHAHIN BE REPORTED TO MR. BLACK, WHO  
MUST THEN DECIDE WHETHER HE WANTS TO TAKE IT TO ARBITRATION OR  
NOT. THE CASE IS OBVIOUSLY MURKY AND WE HAVE DONE ALL WE  
CAN DO TO TRY TO ASSIST HIM. DO NOT KNOW WHAT PROSPECTS  
FAC HAS OF GETTING ITSELF ADMITTED TO COAL EXPORT ASSOCIA-  
TION , BUT DOI  
FAC HAS OF GETTING ITSELF ADMITTED TO COAL EXPORT ASSOCIA-  
TION , BUT DOING SO WOULD ENABLE FAC TO BID ON NEW TENDER.  
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## Message Attributes

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